CF0000061864

CA 11348/97 - (2)

XII-189 / (Jail)
P. T. R. 11/94/2,000

# APPEAL OF PRISONER

Division Bench (Criminal)

No. 2503/96 Name रामसरोस

Father's name समारूराम उम्र - 30 वर्ष

Residence ग्राम - बलोदसा, थाना - मलाम Age जिला - पुरी, हाल मु. - रुवास पड़ाव, थाना - रानपुर जिला - राजनांदगांव (म.प्र.)

Sentenced to आजीवन कारावास एवं अर्थ दण्ड - रु. 500/- या 2 वर्ष On 30/4/97

Under section 302 I.P.C. by प्रथम अपर सत्र न्यायाधीश राजनांदगांव (म.प्र.)

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It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent ..... 29/5/97 .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 2503/96 Name रामसरोस S/o समारूराम

Confined in केन्द्रीय Jail रायपुर म.प्र.

No. 164/विविध/97 Dated 29/5/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय म.प्र. जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

सलग्न :- सत्र प्रकरण क्र. 100/96 की निर्णय की सत्यापित प्रतिलिपी।

Superintendent
Central Jail, Raipur. (M.P.)
..... Jail .....

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Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

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No ..... Dated .....

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
- 9 JUN 1997
Reg. No. 438
Receipt Clerk
High Court, Jabalpur

( P. T. O. )

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(29)

# आदेश पत्रक

मामला क्रमांक Cr.A. No. 1148/97 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ**

**CRIMINAL APPEAL NO. 1148 of 1997**

**Appellant : Rambharosa**

**Vs.**

**Respondent : State of Madhya Pradesh**

Shri S.C.Verma, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, learned Panel Lawyer for the respondent/State.

**ORAL JUDGMENT**
**(16.02.2006)**

**L.C.Bhadoo, J**

The appellant has preferred this appeal under Section 374(2) of the Criminal Procedure Code questioning the legality and correctness of the judgment of conviction and order of sentence dated 30.04.97 passed by learned First Additional Sessions Judge, Rajnandgaon in S.T. No. 100/96 whereby the learned Session Judge after holding the accused/appellant guilty for commission of murder of his wife Shyama Bai convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and pay a fine of Rs. 500/- and in default of payment of fine to further undergo one year rigorous imprisonment.

2. Case of the prosecution, in brief, is that accused Rambharosa along with his wife Shyama Bai were residing in the thrashing field of their uncle. On the fateful day, the maternal uncle and his son went to the fair. In the

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| | afternoon, deceased Shyama Bai was sitting in the house and feeding milk to her son at that time, the maternal aunt of accused Amro Bai was in the thrashing filed and Rupotin Bai went to the well to fetch water during that period the accused/appellant came with a knife and attacked his wife two-three times. P.W.-2 Amro Bai tried to intervene but could not stop the accused/appellant and he attacked his wife with the knife and ran away after leaving knife stuck in the chest of the deceased. Thereafter Amro Bai called his son from the village who came on the scene of occurrence and saw Shyama Bai in the injured condition and informed his father Kunwar Singh. He also came and saw Shyama Bai lying dead and went to the police station Manpur and lodged the report P-1. The Investigating Officer Radhe Shyam, Head Constable registered the merg intimation P-2 and A.S.I. K.R.Banjare left for the scene of occurrence and after giving notice P-3 to the Panchas prepared, Panchanama P-4 of the dead body of Shyama Bai. He took into possession one blanket under P-6, he also took into possession plain soil and bloodstained soil from the place of occurrence under P-7. The shirt and pant of the accused were taken into possession under P-8. After cutting the nails of the accused the same were taken into possession under P-9. Site plan P-10 was prepared by investigating officer A.S.I. K.R.Benjare. Site plan P-12 was prepared by Patwari. The body of Shyama Bai was sent for postmortem examination under P-13 to Govt. Hospital, Manpur where Dr. V.P.Khunte (P.W.9) conducted postmortem and prepared the postmortem report P-13 in which he opined that the cause of death is hemorrhagic shock due to perforated wound and rupture of heart and the death was homicidal in nature. The opinion of the doctor regarding the seized articles was sought under P-14-A and the doctor referred the clothes and bloodstained articles to Forensic | |

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Science Laboratory, Raipur under P-14 and P-15. The clothes of the deceased were taken into possession under P-17. The report of F.S.L. is under P-24. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambagarh Chowki who in turn committed the case to the Sessions Judge, Rajnandgaon from where the First Additional Sessions Judge received the case on transfer for trial.

3. The prosecution in order to establish the charges against the accused examined 12 witnesses. On the other hand, statement of the accused was also recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.

4. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused/appellant convicted and sentenced the accused as mentioned in paragraph 1 of this judgment.

5. We have heard Mr. S.C.Verma, learned counsel on behalf of the accused/appellant and Mr. U.N.S.Deo with Mr. Akhil Mishra, on behalf of the State.

6. Homicidal death of Shyama Bai is not in dispute.

7. As far as involvement of the accused in committing the murder of his wife is concerned, P.W. 3 Rupotin Bai who is the eyewitness has stated that on the fateful day, at the fateful time she went to fetch water from the well which was at a distance of 15-20 ft. away from the place of occurrence and she saw the accused assaulting his wife with the knife and after

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(32)

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मामला क्रमांक Cr. A. 1148/97 सन् 200

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stabbing he left the knife in the stomach of the deceased and ran away from the scene of occurrence. In the cross-examination of this witness the defence has not been able to elicit any circumstance which makes this evidence unreliable or untrustworthy. Further the evidence of this witness stands corroborated by the medical evidence of Dr. V.P.Khunte (P.W. 9) in which he has stated that he conducted the postmortem on 05.02.1996 and found as many as five injuries. There were four incised wounds - on the right side of the chest, two wounds on left side of the chest and on the right side of the elbow. There was perforated wound in the size of 2x1.5 cm., the right lung was ruptured on account of knife injury, the left side of her heart was also found punctured on account of knife injury and the cause of death was hemorrhagic shock on account of injury on the heart and lungs. When P.W.-1 Kunwar Singh, went to the fair and came to know about the incident he immediately came and saw Shyama Bai in the injured condition and reported the matter in Manpur police station under P-1. Amro Bai P.W.-2 in her evidence has stated that she saw the accused while attacking his wife however in the cross examination she has denied it but the fact remains that from the evidence of P.W.-3 Rupotin Bai supported by medical evidence, the involvement of the accused/appellant in the crime in question is established and to that extent we do not find any illegality or infirmity in the judgment of the trial Court.

8. Learned counsel for the accused/appellant argued that from the facts it is established that the offence against the accused/appellant does not travel beyond Section 304-I of the IPC.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(33)

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| 9. | On the other hand learned counsel for the State supported the trial Court judgment. | |
| 10. | Looking to the conduct of the accused, in quick succession, he caused three incised wounds with the knife on the chest of the deceased and as a result of which the heart and lung were ruptured and she died spontaneously. There is nothing on record which shows that there was any sudden fight or quarrel and the accused assaulted in the heat of passion. Moreover, the manner in which the accused attacked repeatedly by, he acted in a cruel manner. Therefore we are of the opinion that the act of the accused is not covered under exception 4 of Section 300 of the IPC. | |
| 11. | In the result we do not find any infirmity or illegality in the judgment of the trial Court and the appeal being devoid of merits is liable to be dismissed. It is accordingly dismissed. | |
| 12. | However, learned counsel for the accused/appellant submit that he has received information from the tria Court counsel that the accused is seriously ill. | |
| 13. | If it is so, then it is the duty of the Superintendent, Central Jail to ensure that proper treatment be given to the accused. Learned counsel for the State to convey intimation to this effect to the Superintendent, Central Jail, Rajnandgaon. | |

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge